

CABINET MEMBER SIGNING

Wednesday, 14th July, 2021, 11.00 am

Members: Councillors Ruth Gordon

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

2. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

(i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and

(ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct

3. APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT LAND ADJACENT TO 318A WHITE HART LANE (PAGES 1 - 12)

4. APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT JANSONS ROAD CAR PARK (PAGES 13 - 26)

5. APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT THREE SITES IN NOEL PARK (PAGES 27 - 42)

6. APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT STAINBY ROAD CAR PARK AND CORNWALL ROAD (PAGES 43 - 56)

7. EXCLUSION OF THE PRESS AND PUBLIC

Items 8 to 11 allow for consideration of exempt information in relation to items 3 to 6.

TO RESOLVE

That the press and public be excluded from the remainder of the meeting as the items below, contain exempt information, as defined under paragraph 3 and 5, Part 1, schedule 12A of the Local Government Act:

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

8. EXEMPT - APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT LAND ADJACENT TO 318A WHITE HART LANE (PAGES 57 - 60)

To consider exempt information pertaining to item 3.

9. EXEMPT - APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT JANSONS ROAD CAR PARK (PAGES 61 - 64)

To consider exempt information pertaining to item 4.

10. EXEMPT - APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT THREE SITES IN NOEL PARK (PAGES 65 - 70)

To consider exempt information pertaining to item 5.

11. EXEMPT - APPROVAL OF APPROPRIATION OF LAND AND CONSTRUCTION CONTRACT AT STAINBY ROAD CAR PARK AND CORNWALL ROAD (PAGES 71 - 76)

To consider exempt information pertaining to item 6.

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Tuesday, 06 July 2021

Report for: **Cabinet Member Signing**

Title: **Approval of housing construction contract and land appropriation at Land adjacent to 318a White Hart Lane N17**

Report
Authorised by **David Joyce, Director of Housing, Regeneration and Planning**

Lead Officer: **Robbie Erbmman, Assistant Director for Housing**

Ward(s) affected: **White Hart Lane**

Report for Key/
Non Key Decision: **Key Decision**

1. Describe the issue under consideration

1.1 This report seeks Cabinet's approval to build six new Council homes on the vacant corner of land adjacent to 318a White Hart Lane.

1.2 In order to achieve this, Cabinet is being asked to agree that the Council should appropriate the land, first for planning purposes and then on completion for housing purposes in order to override any third party rights; and in light of a formal tender process to award a construction contract to Contractor A.

2. Cabinet Member Introduction

2.1 I'm delighted to approve the building of another six new Council homes for letting at Council rent to households on the housing register: three homes with three bedrooms, two with two bedrooms and one with one bedroom.

2.2 The development was welcomed by local residents whose views about materials were incorporated into the design. It will combine a contemporary design with traditional materials which address its context.

3. Recommendation

3.1. It is recommended that Cabinet:

3.2.

3.1.1 Approves the appointment of Contractor A to undertake the new build works to provide a total of six new Council rented homes at the land adjacent to 318a White Hart Lane for a total contract sum of set out in the exempt part of the report; and approves the client contingency sum set out in the exempt part of the report.

3.1.2 Approves the appropriation of the land known as land adjacent to 318a White Hart Lane (edged red in the plans attached at Appendix 1) from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 as it is no longer required for the purpose which it is currently held, and for the purpose of carrying out development as set out in part 6 of this report.

3.1.3 Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by the 318a White Hart Lane development, under planning permission Ref: HGY/2020/1322.

3.1.4 Delegates to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for House-

Building, Place-Making and Development, authority to make payments of compensation as a result of any infringement arising from the development and the recommendation 3.1.3, within the existing scheme of delegation.

- 3.1.5 Approves the appropriation of the land adjacent to 318a White Hart Lane (edged red in the plans attached at Appendix 1) from planning purposes back to housing purposes under Section 19 of the Housing Act 1985, after practical completion of the development.

4. Reasons for decisions

- 4.1. The land adjacent to 318a White Hart Lane was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The scheme has subsequently been granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on this site.
- 4.2. Contractor A has been identified by a formal tender process to undertake these works.
- 4.3. The appropriation of the site for planning purposes is required as it will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The site will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let one new Council home at Council rent.
- 4.4. The site proposal will provide six much needed Council homes on Council land, enhancing the under-used corner of land with an attractive, active frontage to both White Hart Lane and Weir Hall Road.

5. Alternative options considered

- 5.1. It would be possible not to develop this site for housing purposes. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes.
- 5.2. This opportunity was procured via a competitive tender through the London Construction Programme (LCP) Major Works 2019 Framework Agreement, the route recommended by Strategic Procurement for a contract of this value. Alternative options would have been: a direct appointment to one of the LCP framework providers, but this option was rejected in favour of the assumed quality and price safeguarding a competitive tender provides; or a competitive tender through an alternative framework, but this option was rejected in favour of the existing confidence in the LCP.
- 5.3. The Council could continue with the scheme without appropriating the site for planning purposes, but this would risk the proposed development being delayed or stopped by potential third-party claims. By utilising the powers under Section 203 of the Housing and Planning Act 2016 (HPA 2016), those who benefit from third party rights will not be able to seek an injunction since those rights or easements that are overridden are converted into a claim for compensation only.

The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established. The housing delivery team actively engaged with local residents about the development of this site as they proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.

- 5.4. The Council could decide not to appropriate the land for housing purposes upon practical completion of the building works. This option was rejected because it could prevent the Council from being able to offer up these homes for occupation as social housing, thereby not supporting the delivery of much needed affordable homes.

6. Background information

Land adjacent to 318a White Hart Lane development site

- 6.1. As shown in the plan in Appendix 1, the site consists of the land adjacent to 318a White Hart Lane, a prominent corner at the junction of White Hart Lane and Weir Hall Road, opposite Tottenham Cemetery. The immediate area is predominantly characterised by two-storey, terraced houses
- 6.2. This land is Council-owned land held in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of the land adjacent to 318a White Hart Lane into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.
- 6.4. Designs have been developed and approved that will deliver six homes for Council rent at the land adjacent to 318a White Hart Lane; two three-bedroom, five person duplexes, one three-bedroom, five person apartment, two two-bedroom, four person apartments and one one-bedroom, two person apartment.

Engagement and Consultation

- 6.5. An initial resident engagement event was held on 11th February 2020 at Selby Centre N17. The proposals received a majority positive response from Members and residents in attendance. Residents highlighted the issue of limited public parking on match days and concerns regarding the density of the proposed scheme and reported issues of bulk waste dumping on the existing site.
- 6.6. The scheme was submitted to planning on 05th June 2020 and residents were again formally consulted as part of this process. During the consultation period, in response to the positive traffic report considerations, it was decided that the eventual residents would be eligible to apply for parking permits. Planning approval of the scheme was granted after considering responses to the statutory planning consultation on 21st September 2020.

The Build Contract

- 6.7. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.8. The housing scheme at land adjacent to 318a White Hart Lane has been

designed up to stage 3+ of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Since planning approval has been granted, a contractor is now needed to develop and finalise the technical design and complete the new build works. It is currently anticipated that the contract period will be 10 months.

- 6.9. The project tender process involved conducting an expression of interest exercise via the LCP MW 2019 framework in January 2021. This culminated in interest from two contractors, Contractors A and B. Whilst a minimum of three contractors is preferable, this limited interest was compliant with Contract Standing Orders and a competitive tender was deemed the appropriate route for the appointment of a principle contractor.
- 6.10. Bidders were asked by strategic procurement to respond to a 60% price, 40% quality assessment. Details of works cost received from all bidders has been provided in Appendix 2, which is exempt from publication due to the commercially sensitive nature of this information.
- 6.11. The quality questions were evaluated by Haringey's project team. The project team's Cost Consultant was assigned to independently evaluate the cost to ensure value for money in line with current market trends.
- 6.12. Contractor A's contract sum is in the exempt part of the report.
- 6.13. The recommendation is therefore to award the contract to Contractor A, as set out in the exempt report Appendix 2.
- 6.14. The contract is to be awarded to include new build works, site establishments, design works, site enabling, management costs, overheads and profits and there is a defects liability period of 12 months.
- 6.15. The tender assumes signing of the contract and site possession by early August 2021, to allow start on site by in September 2021.

Appropriation of land

- 6.16. This report seeks approval to appropriate the site, land adjacent to 318a White Hart Lane (outlined in the plans attached at Appendix 1), for planning purposes pursuant to Section 122 of the Local Government Act 1972 as it is no longer required for the purposes for which it is currently held.
- 6.17. The site is located on a corner site that fronts onto White Hart Lane to its southern boundary and Weir Hall Road to its western boundary. Tottenham Cemetery is directly adjacent to the south, on White Hart Lane. The proposed development will provide six Council homes and an active frontage to both White Hart Lane and Weir Hall Road. The appropriation of the land and the subsequent development will enable the Council to develop much needed housing in the London Borough of Haringey.
- 6.18. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the HPA 2016 to override easements and other rights of neighbouring properties infringed upon by the land adjacent to 318a White Hart Lane development. The types of rights that can be overridden by Section 203 of

the HPA 2016 are any easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the site. Any development which interferes with that right may entitle the owner of that right to seek an injunction preventing the development going ahead or damages for the effect on value of the right lost because of the interference. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.

- 6.19. It is not believed that the potential infringement of any third-party rights is a breach of human rights, being rights to private and family life. If an injunction is sought by a third party for breach of a right, then if successfully claimed, the right will be converted into a right of compensation for loss of that right under section 204 of the HPA 2016.
- 6.20. Based on the feedback following the public consultation event, there have not been any claims that any third-party rights would be infringed by the development.
- 6.21. Regarding the value of potential compensation for the loss of third-party rights of access and or enjoyment, having undertaken the necessary checks against neighbouring properties, none have easements in relation to the site. Furthermore, no neighbouring properties have come forward asserting any rights of access or enjoyment. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made although it is not likely to be so significant as to impact on the scheme's viability.

7. Contribution to Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes"*.
- 7.2. In particular, the recommendations in this report are explicitly about delivering the aim *"to deliver 1,000 new council homes at council rents by 2022"*. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

8.1. Legal

Appropriation under Section 122 of the Local Government Act 1972

The Council 'holds' the site for housing purposes. In order to override any third-party rights affecting the site, the Council will need to rely on section 203 of HPA 2016 but must first appropriate the Site for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972. Under Section 122:-

The council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.

The Council can appropriate under Section 122 LGA 1972 as:

- a) the site is Council owned land;
- b) the site is no longer required for housing purposes; and
- c) the Council is seeking to appropriate the land for the statutory purpose of planning.

Section 203 of the Housing and Planning Act 2016

By appropriating the land for planning purposes under Section 122 of the LGA 1972, the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.

Section 203 states a person may carry out building or maintenance work even it involves (a) interfering with a relevant right or interest (b) breaching a restriction as to use of land.

The Council satisfies the requirements of Section 203 after appropriation as it will be carrying out building works and planning permission was granted for the redevelopment of the site on 21st September 2020.

The Council will be seeking to appropriate the site following practical completion of the development back for housing purposes into the HRA. The Council can under Section 19 (1) of the Housing Act 1985 appropriate for housing purposes any land for the time being vested in them and at their disposal. This appropriation is necessary as the new build units will be used for social housing by the Council and therefore must be held in the HRA.

The contract referred to in the report has been procured through the London Construction Programme Major Works Framework ("Framework").

The Framework has been established in accordance with the Public Contracts Regulations 2015 and therefore provides a compliant route to market.

The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

8.2. **Procurement**

Strategic Procurement (SP) note that this report relates to the approval of Housing Construction Contract and Land appropriation at Land adjacent to 318a White Hart Lane N17.

SP support the recommendations in this report in accordance with Contract Standing Order clause 7.0.1. (b)

Pursuant to CSO 7.01(b) and Regulation 33 of the Public Contracts Regulations 2015, SP confirms that tenderers were invited to Tender through the LCP Major Works 2019 Framework under Lot 1.1B North.

Compliant tenders were received from two contractors with further clarifications needed to achieve the final price.

SP note that tender returns were evaluated independently by a Quality Panel and the Price element of the Tender was evaluated separately. Contractor A scored the highest in quality and Price overall as set out in the Exempt part of this report.

SP support the recommendations within this report and have no objections with awarding this Contract to Contractor A for the value outlined within the Exempt.

8.3. **Finance**

The scheme will deliver 6 units of social rented homes on completion at a total construction contract value as set out in the exempt report.

The preferred contractor was selected by means of a competitive tender that assessed bidders based on 60:40 price/quality ratio.

There is adequate provision within the HRA new build/acquisition budget for the reported cost.

Further finance comments are contained in the exempt report.

8.4. **Equality**

The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share those protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

The proposed decision relates to new build works to provide six new Council rented homes at 318 White Hart Lane, N17. The decision will increase the supply of Council rented homes. This will have a positive impact on individuals on the housing register, which includes people in severe housing need and people currently living in temporary accommodation. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

As an organisation carrying out a public function on behalf of a public body, the contractor will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

9. Use of appendices

Appendix 1 – Red line boundaries, CGI Floor Plans – land adjacent to 318a White Hart Lane.

Appendix 2- Exempt – financial information

10. Local Government (Access to Information) Act 1985

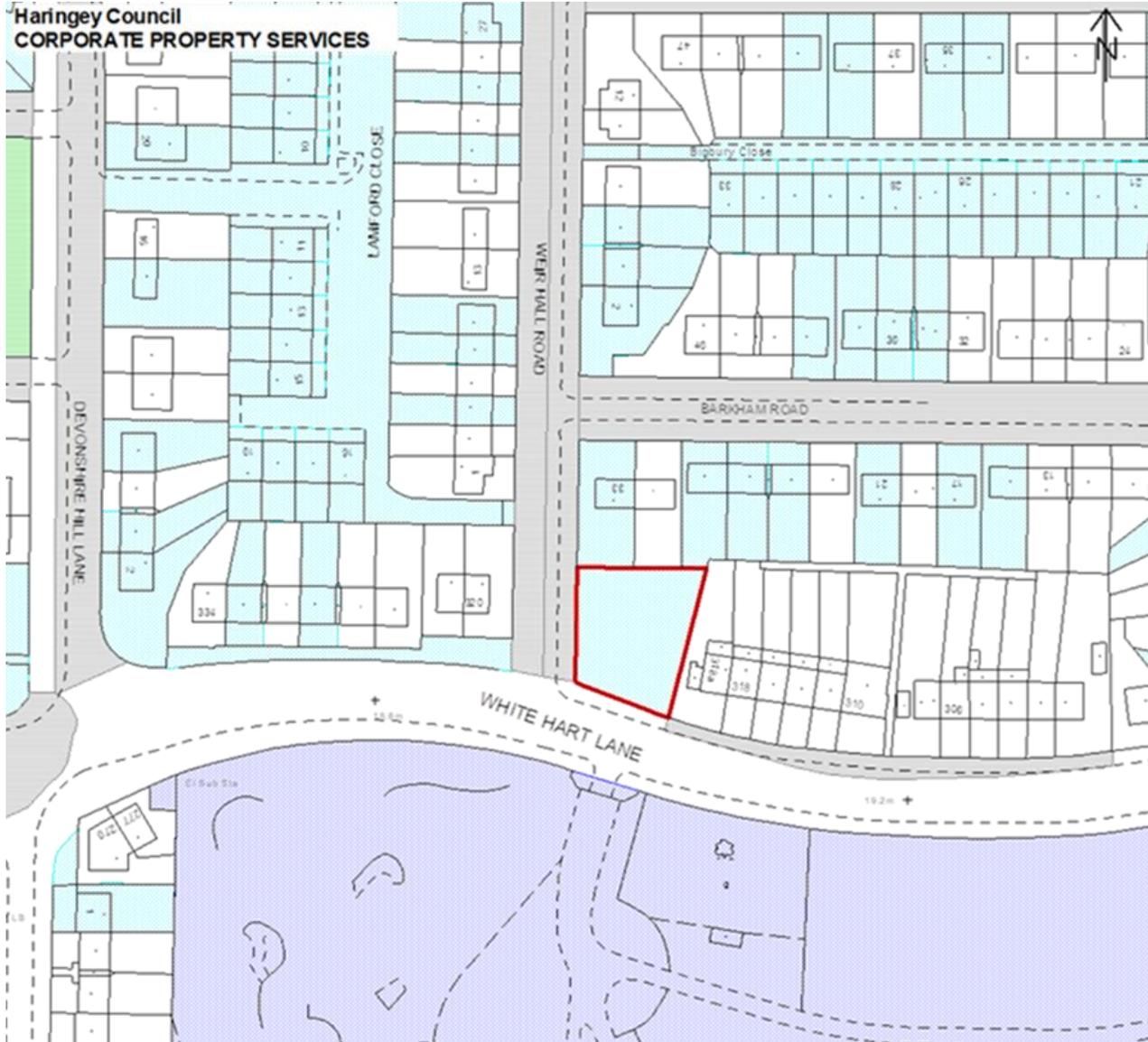
Appendix 2 is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendix 1

Land adjacent to 318a White Hart Lane – Red Line Boundary – CGI of proposed new development and floor layout

The plan below illustrates the red line boundary plan for the 318a White Hart Lane Land Adj development site. The site is located on a vacant corner of White Hart Lane, opposite Tottenham Cemetary.

The land marked red will be redeveloped to provide six Council homes; two three-bedroom, five person duplexes, one three-bedroom, five person apartment, two two-bedroom, four person apartments and one one-bedroom, two person apartment.





This image illustrates the proposed scheme looking west along White Hart Lane, highlighting the schemes corner focal point with Weir Hall Road.

The warm, copper-brown PPC Aluminium roof coping matches the large windows. The roof itself is seamed with similarly coloured zinc panels with the same material used for the laser cut perforated balconies on both Weir Hall Road and White Hart Lane.

The bricks are a warm buff colour, with extruded, quarter-brick Flemish bond detailing between the individual apartment windows and a soldier course banding atop the ground floor of the façade.

The Weir Hall Road communal entrance can be seen, which has PPC Aluminium panels to match the windows. The timber door of the private entrance to the ground floor flat can be seen, which allows the resident secure, but direct access to their home.

A low brick wall, topped with green hedging wraps around the extremity of the building, providing low-height screening from the main road pavement and defensible space to the entrances and communal front garden.



Proposed Site Plan - scale 1:200 approx

This image illustrates the layout of the proposed development.

An active frontage to both White Hart Lane and Weir Hall Road are maintained via the presence of four entrances; two communal and two private. The development is flanked by green space amenity – both private and communal – to the frontages and rear.

The cycle and pram store is on the west side of the rear communal amenity space, accessed primarily through the main stair core of the flats adjacent to Weir Hall Road, but also via the rear garden.

The refuse and recycle store is shown to the west-most side of the development, off Weir Hall Road

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Report for: **Cabinet Member Signing**

Title: **Approval of housing construction contract and land appropriation at Jansons Road car park N15**

Report
Authorised by **David Joyce, Director of Housing, Regeneration and Planning**

Lead Officer: **Robbie Erbmman, Assistant Director for Housing**

Ward(s) affected: **Tottenham Green**

Report for Key/
Non Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1 This report seeks Cabinet's approval, in light of consultation with local residents, to build five new homes on Council-owned land at Jansons Road, Tottenham Green: two one-bedroom flats, one two-bedroom flat, one three-bedroom flat and one three-bedroom wheelchair-accessible flat.
- 1.2 In order to achieve this, Cabinet is being asked to agree that the Council should appropriate the land, first for planning purposes and then on completion for housing purposes; and in light of a formal tender process to award a construction contract to a locally based firm, NFC Homes limited.

2. Cabinet Member Introduction

- 2.1. I am delighted to approve the building of another five new Council homes for letting at Council rent to households on the housing register: two one-bedroom flats, one two-bedroom flat, one three-bedroom flat and one three-bedroom wheelchair-accessible flat.
- 2.2. This decision brings forward a well-designed and contemporary building within an attractive landscaped setting that will improve the streetscape of Philip Lane and Jansons Road. I am confident that additional parking demand created by the loss of the existing car park can be absorbed on-street. And losing those parking spaces has to be balanced against the life-changing impact these homes will provide to five households who otherwise would remain in very unsuitable or temporary accommodation.
- 2.3. These new Council homes will be environmentally sustainable and deliver a low carbon footprint. The development has adopted a fabric first approach with improved U-values and. The new homes will have a green roof, a high level of air tightness, and will use renewable energy sources through air source heat pumps and photo voltaic panels.

3. Recommendation

- 3.1. It is recommended that the Cabinet Member:
- 3.1.1 Considers the responses to the consultation carried out on this proposed scheme in line with section 105 of the Housing Act 1985, as set out in paragraphs 6.5 to 6.9 of this report, and the wider community engagement set out in paragraphs

6.11 to 6.14.

- 3.1.2 Approves pursuant to Contract Standing Order 9.07.1(d) the award of contract to NFC Homes Limited to undertake the new build works to provide a total of five new homes at Jansons Road car park in the contract sum of £1,599,316 and to approve the client contingency sum set out in the Exempt report Appendix 2.
- 3.1.3 Approves the appropriation of the land at Jansons Road car park (edged red in the plans attached at Appendix 1) from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 as it is no longer required for the purpose which it is currently held, and for the purpose of carrying out development as set out in part 6 of this report.
- 3.1.4 Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by the Jansons Road development under planning ref: HGY/2021/0030.
- 3.1.5 Delegates to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for House-Building, Place-Making and Development, authority to make payments of compensation as a result of any infringement arising from the development and the recommendation 3.1.3, within the existing scheme of delegation.
- 3.1.6 Approves the appropriation of the land at Jansons Road car park (edged red in the plans attached at Appendix 1) from planning purposes back to housing purposes under Section 19 of the Housing Act 1985, after practical completion of the development.

4. Reasons for decisions

- 4.1. The land at Jansons Road was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The scheme developed and proposed for this land was subsequently granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on these sites.
- 4.2. The direct appointment of NFC Homes Limited is in the Council's overall interest in terms of achieving best value for money and quality.
- 4.3. The appropriation of the sites for planning purposes is required as it will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The sites will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let new Council homes at Council rent.
- 4.4. The proposals will improve security for new and existing residents and alleviate potential anti-social behaviour and fly tipping attracted by an unsecured car park.

5. Alternative options considered

- 5.1. It would be possible not to develop this site for housing purposes. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes.

- 5.2. The Council could have run a competitive tender from the London Construction Programme (LCP). This option was rejected due to limited interest from the LCP framework contractors and time constraints to deliver the new build programme. Instead, this opportunity was procured via a direct appointment from the Major Works 2019 LCP Framework Agreement, the recommended route for a contract of this value.
- 5.3. The Council could continue with the scheme without appropriating the site for planning purposes, but this would risk the proposed development being delayed or stopped by potential third-party claims. By utilising the powers under Section 203 of the Housing and Planning Act 2016 (HPA 2016), those who benefit from third party rights will not be able to seek an injunction since those rights or easements that are overridden are converted into a claim for compensation only. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established. The housing delivery team actively engaged with local residents about the development of this site as they proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.
- 5.4. The Council could decide not to appropriate the land for housing purposes upon practical completion of the building works. This option was rejected because it could prevent the Council from being able to offer up these homes for occupation as social housing thereby not supporting the delivery of much needed affordable homes.

6. Background information

Jansons Road car park development site

- 6.1. As shown in the plan in Appendix 1, Jansons Road car park is situated within Tottenham Green ward and lies between Jansons Road and Philip Lane. The site is currently used to facilitate car parking. Within the boundary of the site is a memorial garden: the Council is not considering building on that garden. The site is not located within a conservation area; however it is on the corner of the Clyde Circus conservation area. To the immediate east on Philip Lane is a terrace of three storey late 20th century houses. To the west on Philip Lane are large buff brick four-storey semi-detached Victorian villas which are locally listed buildings and have been converted into flats. The surrounding properties to the site are a mix of Edwardian terraced houses and Victorian houses. Bruce Grove railway station and Seven Sisters Underground are the nearest stations to the site which has a PTAL 3 rating.
- 6.2. The site is Council owned and held for housing purposes in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of Jansons Road car park into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.
- 6.4. Designs have been developed and approved by the Planning Authority that will deliver five social rented apartments.

Engagement and Consultation

- 6.5. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.6. The loss of amenity at Jansons Road car park obliges the Council to consult in line with section 105 of the Housing Act 1985 ('section 105'). The section 105 consultation period commenced on 7th September 2020 and ran until 18th October 2020. Of the eleven homes that received the section 105 pack inviting responses, three households formally responded.
- 6.7. All three respondents stated that the proposed removal of the car parking bays breaches the lease agreement of secure tenants/leaseholders in the area. Secure tenancies and lease agreements were checked, and no evidence has been found that parking rights were conferred on residents in the area.
- 6.8. All three respondents stated that the removal of parking facilities would have a detrimental impact on their daily lives. This included specific impact on older residents and those with disabilities who require parking medical care or family related travel.
- 6.9. The respondents further suggested that there was a lack of available parking in the local area which would result in increased congestion. Comments from respondents stated that the Council had not properly audited the parking conditions in the area and that a full survey should have been conducted before proposals were developed. Two consultees suggested that existing users of the car park should be given free on-street parking should the development proposal progress.
- 6.10. A full parking survey was therefore carried out on two separate weekday nights when residents are home. The survey concluded that the adjoining streets covered by a controlled parking zone have capacity to accommodate any additional parking that may arise from the proposed development. Jansons Road has a PTAL rating 3 which is moderate; and there is capacity for residents to apply for on street parking.
- 6.11. Two wider engagement meetings on the proposals were held on Microsoft Teams on Monday 9 November and Tuesday 10 November 2020.
- 6.12. The key comments raised were again the perceived lack of parking spaces in the roads. However, the Council believes that the results of the transport assessment and parking survey show that the additional parking demand created by the loss of the existing car park plus any new parking demand associated with the proposed development can be absorbed on-street.
- 6.13. The proposed development is a car-free development. A parking bay on site is being proposed for a wheelchair accommodation.
- 6.14. A concern was raised about disturbance during the construction works. The Council will ensure that disturbances during the construction works will be reduced to its possible minimum. An indicative Construction Logistics Plan will be prepared to ensure the impacts of the construction process are minimised for

the local community.

- 6.15. The scheme was submitted for planning on 23rd December 2020 and residents were again formally consulted as part of this process. Planning approval of the scheme was granted after considering responses to that consultation on the 9th and 10th November 2020.

The Build Contract

- 6.16. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.17. The housing scheme at Jansons Road car park been designed up to Stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Since planning approval has been granted, a contractor is now needed to undertake detailed technical design and new build works. It is currently anticipated that the contract period will be 17 months.
- 6.18. Direct appointment in this case is justified because it is in the Council's overall interests. The scheme's viability depends on meeting deadlines attached to grant funding: the risk of an unsuccessful competitive tender process was considered to be high, and therefore to put the scheme's viability at risk. A locally based contractor known to have provided the Council with quality work on similar schemes was therefore approached and asked to submit a tender return.
- 6.19. The selected contractor, NFC Homes Limited was asked to respond to a 100% price assessment. They responded with their proposal on 3rd June 2021. Full tender sum analysis has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.20. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.21. Considering the size, scope, complexity, and abnormalities specific to these projects, the Project Cost Consultant has certified that the tender submitted by NFC Homes Limited of £1,599,316 offers value for money in the current market.
- 6.22. The recommendation is therefore to award the contract to NFC Homes Limited as set out in the Exempt report Appendix 2.
- 6.23. The contract is to be awarded to include new build works, site establishments, design works, site enabling, management costs, overheads and profits, and there is a defects liability period of 12 months.
- 6.24. The tender assumes signing of the contract and site possession by 30th September 2021, to allow start on site by Q2 2021. The tender offer remains open for 13 weeks from the return date.

Appropriation of land

- 6.25. This report seeks approval to appropriate the site, Jansons Road car park (outlined in the plans attached at Appendix 1), for planning purposes pursuant to Section 122 of the Local Government Act 1972 as it is no longer required for the

purposes for which it is currently held.

- 6.26. Jansons Road site is a car park. The surrounding area is residential in nature accommodating a range of property types and styles. The site is well located with convenient access to public transport and local shopping facilities. The proposed development seeks to optimise the site to accommodate one-, two- and three-bedroom apartments including one fully accessible wheelchair dwellings.
- 6.27. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the HPA 2016 to override easements and other rights of neighbouring properties infringed upon by the Janson Road car park development. The types of rights that can be overridden by Section 203 of the HPA 2016 are any easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the adjoining site. Any development which interferes with that right may entitle the owner of that right to seek an injunction preventing the development going ahead or damages for the effect on value of the right lost because of the interference. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.
- 6.28. It is not believed that any potential infringement of the third-party rights outlined here over the Site would be a breach of human rights, being rights to private and family life. The right of light on adjoining and neighbouring properties will be managed through rights to light insurance to protect developers from the risk of possible future claims resulting from infringements of a right of light. The engagement events held on 9th and 10th November 2020, which is the formal planning consultation process, did not raise any concerns that there were possible infringements of third-party rights, including rights of light. Furthermore, if an injunction is sought by a third party for breach of a right, then if successfully claimed, the right will be converted into a right of compensation for loss of that right.
- 6.29. Based on the feedback following the public consultation event, there have not been any claims that any third-party rights would be infringed by the development.
- 6.30. Regarding the value of potential compensation for the loss of third-party rights of access and or enjoyment, having undertaken the necessary checks against neighbouring properties, none have easements in relation to the site. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made although it is not likely to be so significant as to impact on the scheme's viability.

7. Contribution to Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of*

tenures to meet the wide range of needs across the borough, prioritising new social rented homes”.

- 7.2. In particular, the recommendations in this report are explicitly about delivering the aim “*to deliver 1,000 new council homes at council rents by 2022*”. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

Legal

Section 105 Housing Act 1985 consultation

- 8.1. The Council has carried out a consultation under section 105 of the Housing Act 1985 to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to:
- (a) to be informed of the authority’s proposals in respect of the matter, and
 - (b) to make their views known to the authority within a specified period;

The Cabinet must therefore prior to making any decision consider the representations made and referred to in Recommendation 3.1.1 of this report.

Appropriation under Section 122 of the Local Government Act 1972

- 8.2. The Council ‘holds’ the Site for housing purposes and is used as a car park and there is no open space. In order to override any third-party rights affecting the Site, the Council will need to rely on section 203 of HPA 2016 but must first appropriate the Site for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972. Under Section 122:-

The council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.

- 8.3. The Council can appropriate under Section 122 LGA 1972 as:
- a) the Site is Council owned land;
 - b) the Site is no longer required for housing purposes; and
 - c) the Council is seeking to appropriate the land for the statutory purpose of planning.

Section 203 of the Housing and Planning Act 2016

- 8.4. By appropriating the land for planning purposes under Section 122 of the LGA 1972, the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.
- 8.5. Section 203 states a person may carry out building or maintenance work even it involves (a) interfering with a relevant right or interest (b) breaching a restriction as to use of land.
- 8.6. The Council satisfies the requirements of Section 203 after appropriation as it

will be carrying out building works and planning permission was granted for the redevelopment of the Site on 9th March 2021.

- 8.7. The Council will be seeking to appropriate the Site following practical completion of the development back for housing purposes into the HRA. The Council can under Section 19 (1) of the Housing Act 1985 appropriate for housing purposes any land for the time being vested in them and at their disposal. This appropriation is necessary as the new build units will be used for social housing by the Council and therefore must be held in the HRA.
- 8.8. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 (“the Framework”).
- 8.9. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).
- 8.10. The rules of the Framework permit a direct award of contracts up to £2.5 million.
- 8.11. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

- 8.12. Strategic Procurement notes the update on the Housing Delivery Programme and recommendations within section 3.1 (3.1.2-3.1.5) of this report; however, comments are not applicable for property and land transactions as they sit outside of the Procurement Contract Regulations.
- 8.13. Strategic Procurement support the award of this contract as the contract has been awarded by way of a direct award from the LCP Framework (Housing and residential lot 1.1b) in accordance with the framework regulations.

Finance

- 8.14. The scheme will deliver 5 units of social rented homes on completion at a total construction contract value of £1.6m.
- 8.15. The preferred contractor was directly appointed, due to limited interest, following an assessment by the project team’s cost consultant.
- 8.16. This scheme is contained in the current HRA financial plan and MTFS, and the estimated spend in the current year will be met from the approved new build capital budget.
- 8.17. Further Finance comments are contained in the exempt report.

Equality

- 8.18. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
 - Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act

- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.19. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex, and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.

8.20. The proposed decision relates to new build works to provide five Council rented home at Jansons Road car park. The decision will increase the supply of Council rented homes which are genuinely affordable to local residents. This is likely to have a positive impact on individuals in temporary accommodation as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and individuals with disabilities are known to be vulnerable to homelessness, as detailed in the [Equalities Impact Assessment of the council's Draft Homelessness Strategy](#). It is noted that one new unit will be wheelchair accessible with on-site disabled parking as set out in paragraph 6.13. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

8.21. It is noted that during the S105 consultation, three residents raised concerns about the impact of removing the car park including due the specific impact on older residents and those with disabilities. It is also noted that in response to these concerns, the council has undertaken a full parking survey which concluded that the adjoining streets covered by a controlled parking zone have capacity to accommodate any additional parking that may arise from the proposed development. It is also noted that one of the new council homes will be wheelchair-accessible and will be accompanied by a disabled parking bay. In summary, the decision is a proportionate means of achieving a legitimate aim insofar as individuals with protected characteristics are overrepresented on the waiting list for a council home and stand to benefit from the construction of new homes, while appropriate steps are being taken to mitigate any potential negative impact on individuals with protected characteristics that may be caused by the reduction in car park accessibility.

8.22. As an organisation carrying out a public function on behalf of a public body, the contractor will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

9. Use of Appendices

Appendix 1 – Red line boundaries, CGI Floor Plans -
Appendix 2- Exempt – financial information

10. Local Government (Access to Information) Act 1985

Appendix 2 is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the

financial or business affairs of any person (including the authority holding that information).

Appendix 1

Jansons Road – Red Line Boundary – CGI of propped new development and floor layout

The plan below illustrates the red line boundary plan for Jansosn Road development site.

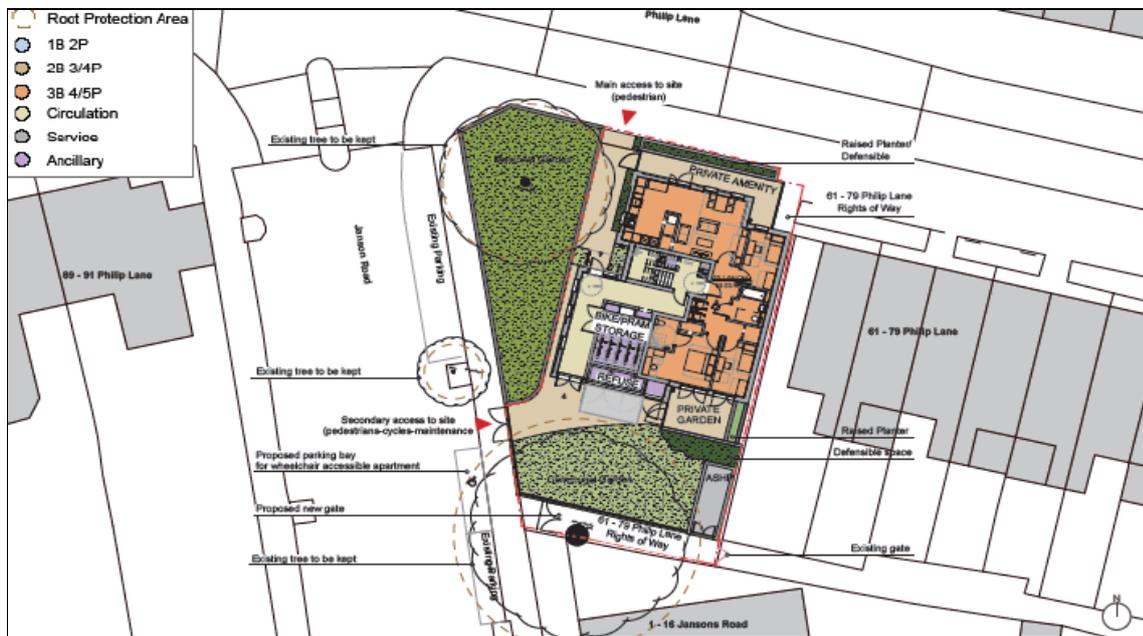
The land marked red will be redeveloped to provide 5 flats for social rent.



Jansons Road – Planning Approved Design and floor layout.



Jansons Road Ground floor plan



Jansons Road

First floor plan



Jansons Road

Second floor plan



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Report for: **Cabinet Member Signing**

Title: **Approval of appropriation of land and construction contract at three sites in Noel Park**

Report

Authorised by **David Joyce, Director of Housing, Regeneration and Planning**

Lead Officer: **Robbie Erbmann, Assistant Director for Housing**

Ward(s) affected: **Noel Park.**

Report for Key/

Non Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1 This report seeks Cabinet's approval, in light of engagement with residents, to deliver three new Council homes for Council rent on Council land in Noel Park at Bury Road, Farrant Avenue and Morley Avenue. The recommended development has received planning permission: for Bury Road on 12th April 2021, Farrant Avenue on 12th March 2021 and Morley Avenue on 9th April 2021.
- 1.2 In order to achieve deliver these new homes, Cabinet is being asked to agree that the Council should appropriate the land, first for planning purposes in order to override any third-party rights and then on completion for housing purposes; and to award a construction contract to a locally based firm, NFC Homes limited.

2. Cabinet Member Introduction

- 2.1 I'm delighted to approve the building of another three new three-bedroom Council houses for letting at Council rent to households on the housing register. These beautiful new Council houses retain the principle and proportions of the key features in the Noel Park area. Without being pastiche, they sit sensitively within their existing context. They will have high levels of insulation, solar roof panels, energy efficient heating, and will be constructed with responsibly sourced materials

3. Recommendation

- 3.1. It is recommended that Cabinet:
 - 3.1.1 Approves the direct appointment of NFC Homes Limited as allowed by Contract Standing Order 10.01.2. to undertake the new build works to provide a total of three Council rented homes at Bury Road, Farrant Avenue and Morley Avenue garages for a total contract and client contingency sum set out in the exempt part of the report.
 - 3.1.2 Approves the appropriation of each of the land at Bury Road, the Farrant Avenue garages and the Morley Avenue garages (each edged red in the plans attached at Appendix 1) from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 as it is no longer required for the purpose

which it is currently held, and for the purpose of carrying out development as set out in paragraphs 6.1 to 6.22 of this report.

- 3.1.3 Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by each of the Bury Road, Farrant Avenue, and Morley Avenue developments, under planning permissions HGY/2021/0059 (Bury Road) HGY/2021/0095 (Farrant Avenue) and HGY/2021/0054 (Morley Avenue).
- 3.1.4 Delegates to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for House Building, Placemaking and Development, authority to make payments of compensation as a result of any infringement arising from each of the development and the recommendation within the existing scheme of delegation.
- 3.1.5 Approves the appropriation of each of the land at Bury Road, Farrant Avenue and Morley Avenue (edged red in the plans attached at Appendix 1) from planning purposes back to housing purposes under Section 19 of the Housing Act 1985, after practical completion of each of the development.

4. Reasons for decisions

- 4.1. The land at Bury Road, Farrant Avenue and Morley Avenue was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The schemes were subsequently granted planning consent and are ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on these sites.
- 4.2. The direct appointment of NFC Homes Limited is in the Council's overall interest in terms of achieving best value for money and quality.
- 4.3. The appropriation of the sites for planning purposes is required as it will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The sites will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let new Council homes at Council rent.
- 4.4. As well as delivering three homes for families in housing need, the proposals will improve security for new and existing residents and alleviate fly tipping, anti-social behaviour, and pest infestation attracted to the sites by the derelict garages at Bury Road, Farrant Avenue and Morley Avenue garages.

5. Alternative options considered

- 5.1. It would be possible not to develop this site for housing purposes. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes.

- 5.2. The Council could have run a competitive tender from the London Construction Programme (LCP). This option was rejected due to limited interest from the LCP framework contractors and time constraints to deliver the new build programme. Instead, this opportunity was procured via a direct appointment from the Major Works 2019 LCP Framework Agreement, the recommended route for a contract of this value.
- 5.3. The three sites could have been procured through separate contracts. This option was rejected because it would have been more costly and more time-consuming.
- 5.4. The Council could continue with the scheme without appropriating the sites for planning purposes, but this would risk the proposed development being delayed or stopped by potential third-party claims. By utilising the powers under Section 203 of the Housing and Planning Act 2016 (HPA 2016), those who benefit from third party rights will not be able to seek an injunction since those rights or easements that are overridden are converted into a claim for compensation only. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established. The housing delivery team actively engaged with residents about the development of this sites as they proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.
- 5.5. The Council could decide not to appropriate the land for housing purposes upon practical completion of the building works. This option was rejected because it could prevent the Council from being able to offer up these homes for occupation as social housing thereby not supporting the delivery of much needed affordable homes.

6. Background information

Bury Road, Farrant, and Morley Avenue garages

- 6.1. As shown in the plans in Appendix 1, Bury Road, Farrant Avenue, and Morley Avenue garages are situated within the Noel Park conservation ward area. The garage sites are located on residential streets characterised by low-density terraced houses. The initial proposal of single dwelling houses responds to surrounding constraints and the existing streetscape. The sites are located within easy access to a range of local amenities including Wood Green shopping centre and Wood Green underground station. The sites offer a PTAL of 3 and has good pedestrian and cycle links.
- 6.2. This land is Council-owned and held in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of Bury Road, Farrant Avenue, and Morley Avenue garages sites into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.
- 6.4. The housing scheme at Bury Road, Farrant Avenue, and Morley Avenue garages has been designed up to stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Since planning approval has been granted, a contractor is

now needed to undertake technical design and new build works; it is currently anticipated that the contract period will be 15 months.

Engagement and Consultation

- 6.5. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.6. Two engagement meetings were held for Farrant and Morley Avenue on Tuesday, 17 November, and Thursday 19 November and Bury Road engagement meeting was held on 17th November 2020. The proposals were positively received by Members and some residents.
- 6.7. One resident raised a concern that material should be responsibly sourced and environmentally friendly and make use of material such as timber frames which is in keeping with the Noel Park Conservation area. Other concerns raised were that designs of the new houses should reflect the characteristics of the existing houses in the Noel Park conservation area. The Council's approach to design was to retain the principle and proportions of the key features in the Noel Park area and develop a scheme that sensitively sits within the existing context yet is not pastiche. It is important to allow the original buildings within Noel Park to be clearly identifiable so that they can be clearly linked back to their era of construction, without the confusion of an imitation infill.
- 6.8. One tenant raised a concern about possible injury of rights of light to his property and back garden as a result of the proposed new building line. A right of light survey was undertaken. Based on the feedback following the public consultation event, there have not been any claims that any third-party rights would be infringed by the development. However, should any claim be made for any infringement of right to light, potential costs are set out in the exempt report Appendix 2.
- 6.9. Nobody attended the Bury Road engagement meeting in person. However, two comments were placed on the Council's on-line comments board. One supported the development but did not feel that the design reflected the Noel park area; the other supported the development on the basis that the area is in need of regeneration due to local derelict buildings and the multi storey car park
- 6.10. It is noted that engagements regarding S105 obligations were not applicable for these sites.
- 6.11. The schemes were submitted for planning on 22nd December 2020 and residents were again formally consulted as part of this process. Planning approval of the scheme was granted after considering responses to that consultation on the 17 and 19th November 2020.

The Build Contract

- 6.12. This report is seeking final approval of the construction contract to enable the new build works to commence.

- 6.13. The project tender process involved conducting an initial expression of interest exercise via the LCP Major Works 2019 framework, in May 2021. Due to limited interest in a competitive tender, however, it was decided in light of time constraints that a direct appointment was the most appropriate route.
- 6.14. Direct appointment in this case is justified because it is in the Council's overall interests. The scheme's viability depends on meeting deadlines attached to grant funding: the risk of an unsuccessful competitive tender process was high, and therefore to put the scheme's viability at risk. A locally based contractor known to have provided the Council with quality work on similar schemes was therefore approached and asked to submit a tender return.
- 6.15. The selected contractor, NFC Homes Limited, was asked to respond to a 100% price assessment. They responded with their proposal on 3rd June 2021. Full tender sum analysis has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.16. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market.
- 6.17. Considering the size, scope, complexity, and abnormalities specific to these projects, the Project Cost Consultant has certified that the tender submitted by NFC Homes Limited of £1,027,729 offers value for money in the current market.
- 6.18. The recommendation is therefore to award the contract to NFC Homes Limited as set out in the exempt report Appendix 2.
- 6.19. The contract is to be awarded to include new build works, site establishments, design works, site enabling, management costs, overheads and profits, and there is a defects liability period of 12 months.
- 6.20. The tender assumes signing of the contract and site possession by 30th September 2021, to allow start on site by Q2 2021 as the tender offer remains open for 13 weeks from the return date.

Appropriation of land

- 6.21. This report seeks approval to appropriate the sites at Bury Road, Farrant, and Morley Avenue (outlined in the plans attached at Appendix 1), for planning purposes pursuant to Section 122 of the Local Government Act 1972 as they are each no longer required for the purposes for which they currently held.
- 6.22. The Sites consists of derelict garages. The land at Morley Avenue is a poorly maintained parcel of land that houses 3 garages. Bury Road garages is being used to store burrows by food retailers. Removal of overgrown vegetation to the rear of Farrant Avenue garages may have an impact on the green cover however the scheme presents significant enhancement opportunities by utilising the site to provide much needed homes. The unkept grounds will be free from pests and foxes. Natural surveillance to the front of the site will mitigate fly tipping and dumping of rubbish. The appropriation of the land and the subsequent

development will enable the Council to implement security measures such as path lighting to help reduce crime levels but also bring the garages back into use as housing.

- 6.23. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the HPA 2016 to override easements and other rights of neighbouring properties infringed upon by the Bury Road, Farrant, and Morley Avenue developments. The types of rights that can be overridden by Section 203 of the HPA 2016 are any easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the adjoining site. Any development which interferes with that right may entitle the owner of that right to seek an injunction preventing the development going ahead or damages for the effect on value of the right lost because of the interference. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.
- 6.24. It is not believed that the potential infringement of the third-party rights outlined here over the Sites is a breach of human rights, being rights to private and family life. The right of light on adjoining and neighbouring properties will be managed through rights to light insurance to protect the Council from the risk of possible future claims resulting from infringements of a right of light. Furthermore, if an injunction is sought by a third party for breach of a right, then if successfully claimed, the right will be converted into a right of compensation for loss of that right under section 204 of the HPA 2016.
- 6.25. Based on the feedback following the public consultation event, there have not been any claims that any third-party rights would be infringed by the development. However, should any claim be made for any infringement of right to light, potential costs are set out in the exempt report Appendix 2.
- 6.26. Regarding the value of potential compensation for the loss of third-party rights of access and or enjoyment, having undertaken the necessary checks against neighbouring properties, none have easements in relation to the site. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made although it is not likely to be so significant as to impact on the scheme's viability.

7. Contribution to Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes"*.
- 7.2. In particular, the recommendations in this report are explicitly about delivering the

aim “to deliver 1,000 new council homes at council rents by 2022”. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

Legal

Appropriation under Section 122 of the Local Government Act 1972

- 8.1. The Council ‘holds’ each of the Sites for housing purposes. In order to override any third-party rights affecting each of the Sites, the Council will need to rely on section 203 of HPA 2016 but must first appropriate the Sites for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972. Under Section 122

The council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.

- 8.2. Section 122 LGA 1972 also provides that the Council may not appropriate land constituting or forming part of an ‘open space’ or land forming part of a common unless they first advertise their intention to do so under the section. The sites do not contain any open spaces.
- 8.3. The Council can appropriate under Section 122 LGA 1972 as:
- a) the Site is Council owned land;
 - b) the Site is no longer required for housing purposes; and
 - c) the Council is seeking to appropriate the land for the statutory purpose of planning.

Section 203 of the Housing and Planning Act 2016

- 8.4. By appropriating the land for planning purposes under Section 122 of the LGA 1972, the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.
- 8.5. Section 203 states a person may carry out building or maintenance work even it involves (a) Interfering with a relevant right or interest (b) breaching a restriction as to use of land. This applies to building work where: -
- a) there is planning consent,
 - b) the work is on land for the purpose for which the land was vested, acquired, or appropriated for planning purposes under section s.246(1) of the Town and Country Act 1990;
 - c) the authority could acquire the land compulsorily for the purpose of the building work.
- 8.6. The Council satisfies the requirements of Section 203 after appropriation as building works will be carried out pursuant to planning permissions granted for Bury Road on 12th April 2021, Farrant Avenue 1 on 2 March 2021 and Morley

Avenue on 9th April 2021 and the Council considers that the development will lead to an improvement in the economic, social, or environmental wellbeing of the areas as outlined in this report.

- 8.7. The Council will be seeking to appropriate each of the Sites following practical completion of each of the developments back for housing purposes into the HRA. The Council can under Section 19 (1) of the Housing Act 1985 appropriate for housing purposes any land for the time being vested in them and at their disposal. The appropriations of each site is necessary as the new build units will be used for social housing by the Council and therefore must be held in the HRA.
- 8.8. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 (“the Framework”).
- 8.9. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).
- 8.10. The rules of the Framework permit a direct award of contracts up to £2.5 million.
- 8.11. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

- 8.12. Strategic Procurement notes the update on the Housing Delivery Programme and recommendations within section 3.1 (3.1.2-3.1.5) of this report; however, comments are not applicable for property and land transactions as they sit outside of the Procurement Contract Regulations.
- 8.13. Strategic Procurement support the award of this contract as the contract has been awarded by way of a direct award from the LCP Framework (Housing and residential lot 1.1b) in accordance with the framework regulations.

Finance

- 8.14. Bury Road, Farrant, and Morley Avenue sites will deliver one 3-bedroom house across all three sites. Total construction value is referenced on the exempt report Appendix 2.
- 8.15. The preferred contractor was directly appointed, due to limited interest, and in line with contract standing order 10.01.2.
- 8.16. This scheme is contained in the current HRA financial plan and MTFs, and the estimated spend in the current year will be met from the approved new build capital budget.
- 8.17. Further finance comments are contained in the exempt report.

Equality

- 8.18. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.19. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex, and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.

8.20. The proposed decision relates to new build works to provide three Council rented homes.

8.21. The decision will increase the supply of Council rented homes which are genuinely affordable to residents. This is likely to have a positive impact on individuals in temporary accommodation as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and individuals with disabilities are known to be vulnerable to homelessness, as detailed in the [Equalities Impact Assessment of the council's Draft Homelessness Strategy](#). As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

8.22. From an equalities perspective, it is noted that engagements regarding S105 obligations were not applicable for these sites and that consultation on this development has taken place with residents.

8.23. As an organisation carrying out a public function on behalf of a public body, the contractor will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

9. Use of appendices

Appendix 1 – Red line boundaries, CGI Floor Plans -
Appendix 2- Exempt – financial information

10. Local Government (Access to Information) Act 1985

Appendix 2 is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the financial or business affairs of any person (including the authority holding that information).

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Appendix 1

Bury Road – Red Line Boundary – CGI of proposed new development and floor layout

The plan below illustrates the red line boundary plan for Bury Road development site.

The land marked red will be redeveloped to provide one 3-bedroom house for social rent.



Garages
adj 65 Bury Road
Wood Green
London
N22 6HS

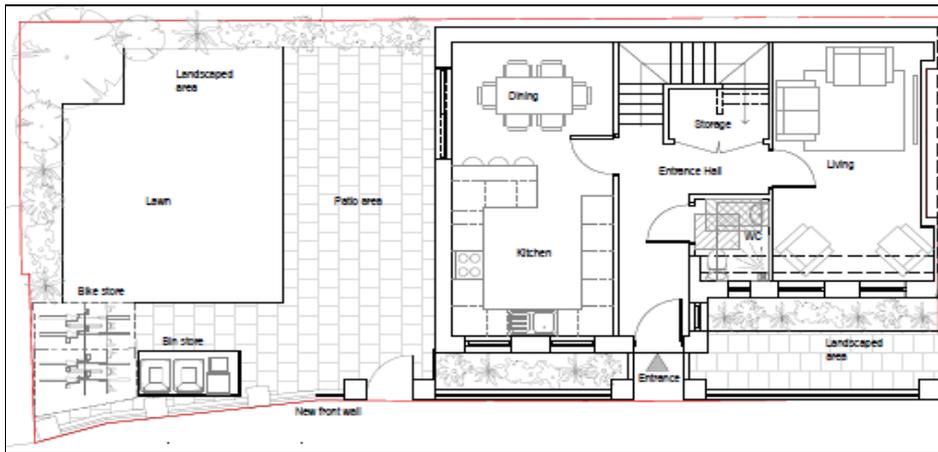
Ward: Noel Park
Overlay: HSC - Misc
Plan produced by Shannon Francis on 07/11/2019

Red outline - site boundary
Deed Packet No: 608
Title No: MX334295
Area: 0.0152 ha
Scale 1:1000
Drawing No. BVES A4 Misc

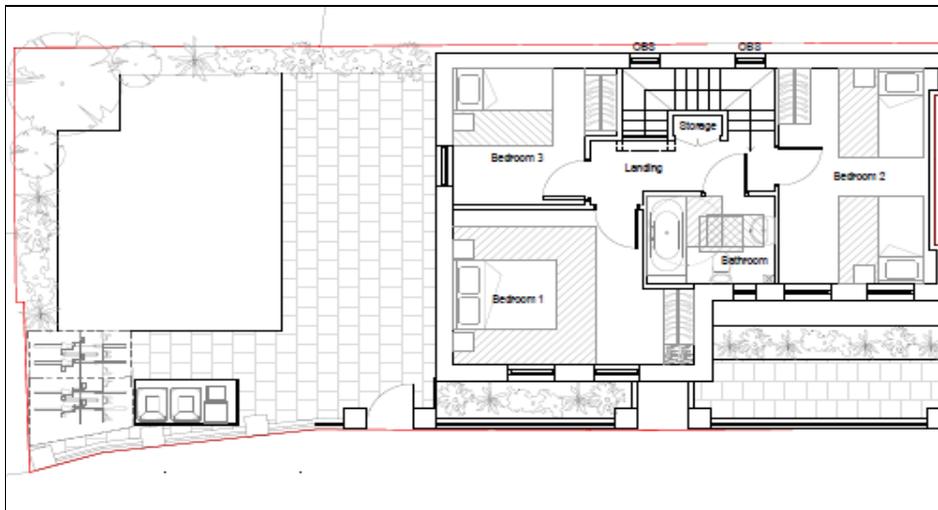
Bury Road – Planning Approved Design and floor layout.



Bury Road CGI



Bury Road ground floor plan

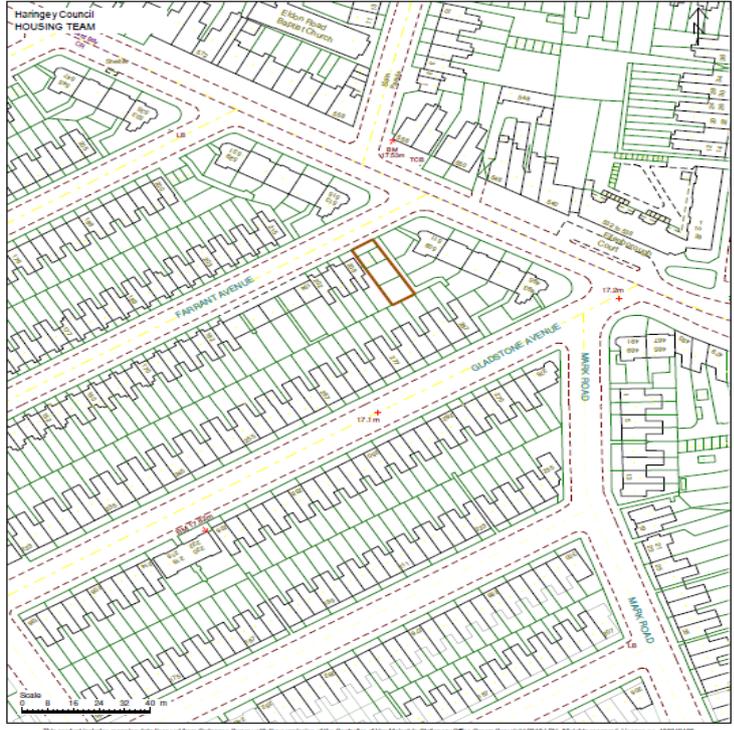


Bury Road first floor plan

Farrant Avenue – Red Line Boundary – CGI of proposed new development and floor layout

The plan below illustrates the red line boundary plan for Farrant Avenue development site.

The land marked red will be redeveloped to provide one 3-bedroom house for social rent.



Garages & Land
adj 208 Farrant Avenue
London
N22 6PG

Red outline - Site Boundary

Deed Packet No:
Title No: MX334295

Area: 0.0195 ha

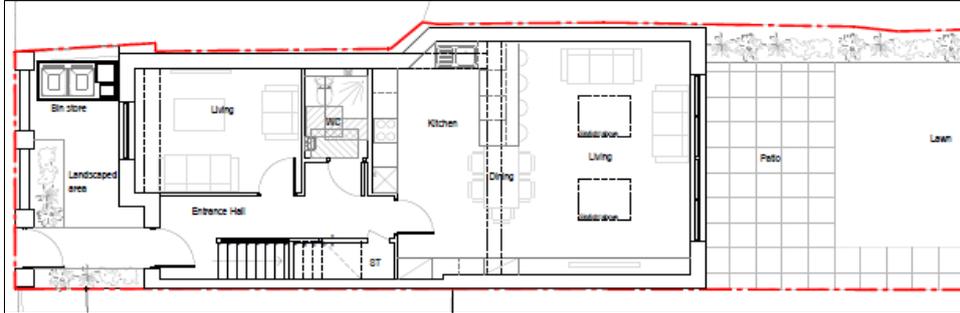
Ward: Noel Park

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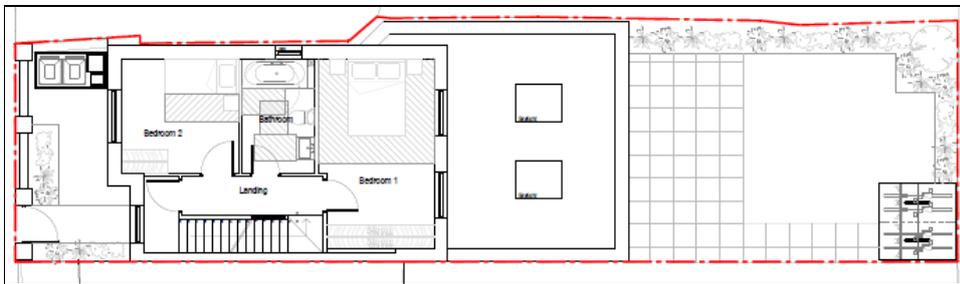
Farrant Avenue – Planning Approved Design and floor layout.



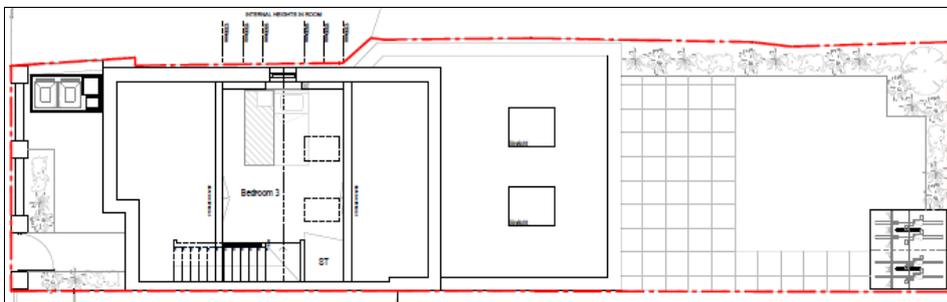
Farrant Avenue CGI



Farrant Avenue ground floor plan



Farrant Avenue first floor plan



Farrant Avenue second floor plan

Appendix 1

Morley Avenue – Red Line Boundary – CGI of proposed new development and floor layout

The plan below illustrates the red line boundary plan for Morley Avenue development site. The land marked red will be redeveloped to provide one 3-bedroom house for social rent.



Garages & Land
adj 200 Morley Avenue
London
N22 6NT

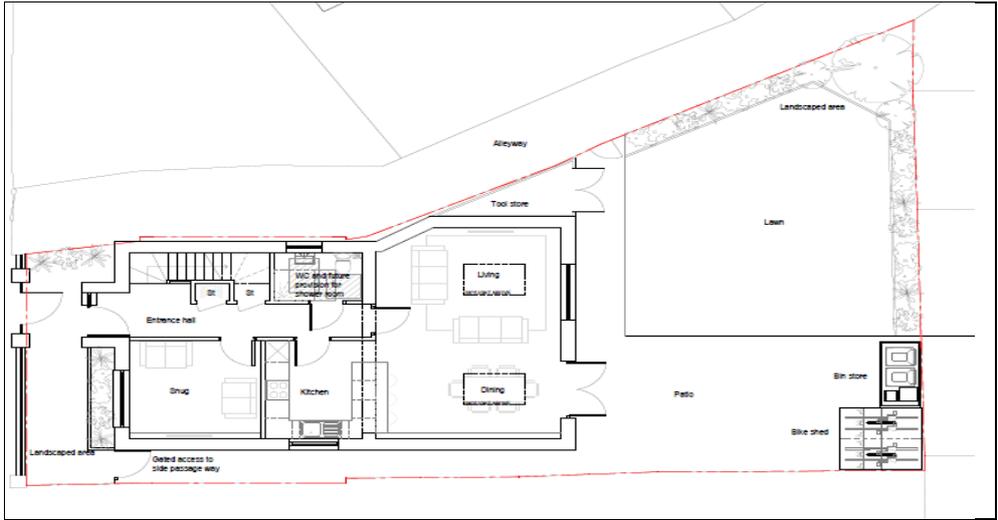
Red outline - Site Boundary

Deed Packet No:
Title No: MX334295
Area: 0.0210 ha

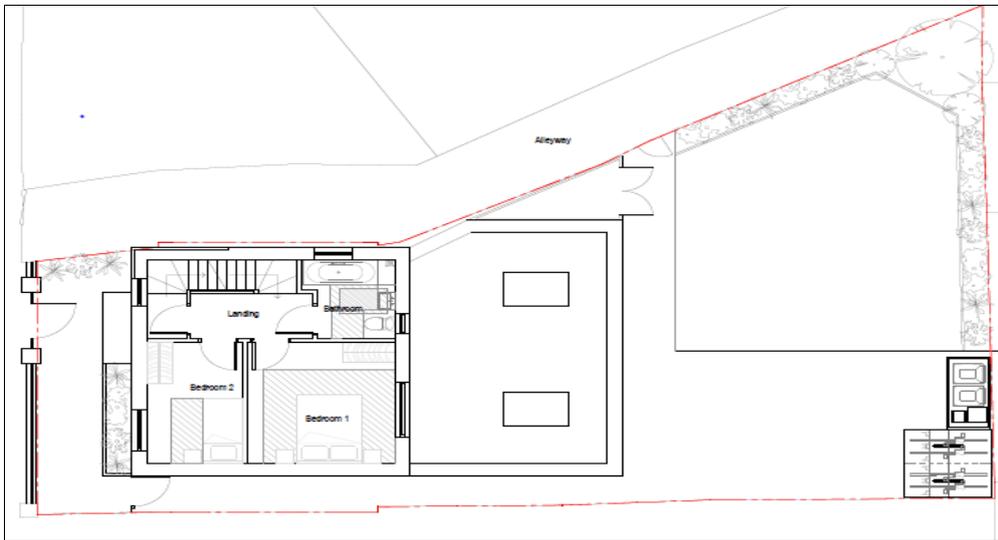
Ward: Noel Park



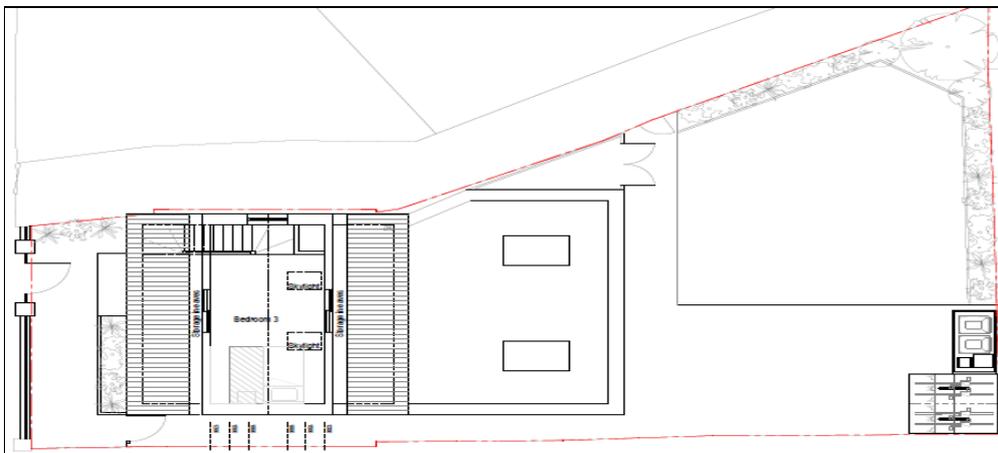
Morley Avenue CGI



Morley Avenue ground floor plan



Morley Avenue first floor plan



Morley Avenue second floor plan

Report for: **Cabinet Member Signing**

Title: **Approval of appropriation of land and construction contract at Stainby Road car park and Cornwall Road**

Report

Authorised by **David Joyce, Director of Housing, Regeneration and Planning**

Lead Officer: **Robbie Erbmman, Assistant Director for Housing**

Ward(s) affected: **St Anns & Tottenham Green**

Report for Key/

Non Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1 This report seeks Cabinet's approval, in light of engagement and consultation with local residents, to build two houses on Stainby Road car park and nine apartments on a disused tennis court at Cornwall Road for Council rent on Council land.
- 1.2 In order to achieve this, Cabinet is being asked to agree that the Council should appropriate the land, first for planning purposes and then on completion for housing purposes; and in light of a formal tender process to award a construction contract to a locally-based firm, NFC Homes limited.

2. Cabinet Member Introduction

- 2.1 I'm delighted to approve the building of another eleven new Council homes for letting at Council rent. This decision will bring forward two three-bedroom houses at Stainby Road and three one-bedroom flats, four two-bedroom flats and two two-bedroom flats for wheelchair users at Cornwall Road.
- 2.2 The new homes will allow the Council to enhance their surrounding areas. At Cornwall Road, vacant and part-derelict land will be comprehensively landscaped to benefit new and existing residents, with a communal space with natural play space for younger children, seating, and new planting. The new homes at Stainby Road will fill a noticeable gap in a well-established street. Stainby Road and, with the exception of the two wheelchair-accessible homes, Cornwall Road are both car-free developments.

3. Recommendation

- 3.1. It is recommended that Cabinet:
- 3.1.1 Considers the responses to the consultation carried out on this proposed scheme in line with section 105 of the Housing Act 1985, as set out in paragraphs 6.13 of this report, and the wider community engagement set out in paragraphs 6.6 to 6.18.
- 3.1.2 Approves the appointment of NFC Homes Limited to undertake the new build works to provide a total of nine new homes at Cornwall Road and two new homes at Stainby Road car park for the contract sum of £3,228,291 and to approve the

client contingency sum set out in the Exempt report Appendix 2.

- 3.1.3 Approves the appropriation of the land at Cornwall Road Tennis Court and the land at Stainby Road Car Park (each shown edged red in the plans attached at Appendix 1) from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 as it is no longer required for the purpose which it is currently held, and for the purpose of carrying out development as set out in part 6 of this report.
- 3.1.4 Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by each of the Cornwall Road development under planning ref: HGY/2021/0967 and Stainby Road development, under planning permission ref: HGY/2020/0087.
- 3.1.5 Delegates to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for House Building, Placemaking and Development, authority to make payments of compensation as a result of any infringement arising from the development and the recommendation 3.1.3, within the existing scheme of delegation.
- 3.1.6 Approves the appropriation of each of the land at Cornwall Road and the land at Stainby Road car park (each edged red in the plans attached at Appendix 1) from planning purposes back to housing purposes under Section 19 of the Housing Act 1985, after practical completion of each of the individual development.

4. Reasons for decisions

- 4.1. The land at Cornwall Road and Stainby Road was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The schemes were subsequently granted planning consent and are ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on these sites.
- 4.2. The appropriation of the sites for planning purposes is required as it will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The sites will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let new Council homes at Council rent.
- 4.3. The proposals will improve security for new and existing residents and alleviate potential anti-social behaviour attracted to the sites by an open disused Tennis Court at Cornwall Road and an unsecured car park at Stainby Road.

5. Alternative options considered

- 5.1. It would be possible not to develop this site for housing purposes. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes.
- 5.2. The Council could have run a competitive tender from the London Construction Programme (LCP). This option was rejected due to limited interest from the LCP framework contractors and time constraints to deliver the new build programme.

Instead, this opportunity was procured via a direct appointment from the Major Works 2019 LCP Framework Agreement, the recommended route for a contract of this value.

- 5.3. The two sites could have been procured through separate contracts. This option was rejected because it would have been more costly and more time-consuming.
- 5.4. The Council could continue with the scheme without appropriating the site for planning purposes, but this would risk the proposed development being delayed or stopped by potential third-party claims. By utilising the powers under Section 203 of the Housing and Planning Act 2016 (HPA 2016), those who benefit from third party rights will not be able to seek an injunction since those rights or easements that are overridden are converted into a claim for compensation only. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established. The housing delivery team actively engaged with local residents about the development of this site as they proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.
- 5.5. The Council could decide not to appropriate the land for housing purposes upon practical completion of the building works. This option was rejected because it could prevent the Council from being able to offer up these homes for occupation as social housing thereby not supporting the delivery of much needed affordable homes.

6. Background information

Cornwall Road and Stainby Road car park development site

- 6.1. As shown in the plan in Appendix 1, Cornwall Road site is situated within the St Anns ward area and has a PTAL rating 2. The existing site is a disused tennis court, it lies between Cornwall and Ida Road. There are shared boundaries with a row of residential properties that front Gorleston Road. The site itself is made up of an eastern area of grassland bordering the Ida Road properties and a hard-surfaced area with partially demolished garages.
- 6.2. As shown in the plan in Appendix 1, Stainby Road car park is situated within the Tottenham Green ward area. The site lies between Seven Sisters and Tottenham Hale stations and has a PTAL rating 6a. Across the road from the site is a single-storey building known as Welbourne Primary School. To the east side of the site are two bungalows and two garages which are accessed directly from the site. The flank wall of the adjacent two-storey terraced house and the garden fence from the west boundary of the site has a high brick wall with private gardens behind them along the southern boundary.
- 6.3. Both sites are Council owned and held for housing purposes in the HRA.
- 6.4. In July 2019, Cabinet approved the inclusion of Cornwall Road and Stainby Road into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.

- 6.5. Designs have been developed and approved that will deliver nine flats at Cornwall Road, three one-bedroom flats, four two-bedroom flats and two two-bedroom flats for wheelchair users. Stainby Road will deliver two three-bedroom houses with front and rear gardens.

Community Engagement – Cornwall Road

- 6.6. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.7. Two engagement meetings were held for Cornwall Road on Monday 16th November and Friday 20th November 2020. The proposals were positively received by Members and some residents.
- 6.8. Some residents raised concerns about the height of the proposed building and possible overlooking to gardens and privacy. To tackle this issue, the Council designed projecting windows which obscure the direct view out towards the East but allow views out towards the North and the South. This solution stops the overlooking issues whilst still allowing daylight into the accommodation. Whilst there were concerns raised about overlooking from balconies of the proposed building onto 7-8 Ida Road, all balconies have been designed to stop overlooking. The balconies on both side use louvred screens to direct views away from the neighbouring gardens, and the balconies on the North facade face North away from neighbouring properties.
- 6.9. A neighbouring resident raised a concern about the current location of the proposed bin store serving block 2. The bin store appeared to be positioned in a neighbouring resident's back garden. the Council has carried out the necessary land registry searches and report on titles. No encroachment by the council has been identified. The proposed location of the bin store is confined within the boundary of council owned land. The scheme has been designed in accordance with land owned and managed by the Council.
- 6.10. Removal of trees which are significant to wildlife was another area of concern raised by participants. An arboricultural survey was carried out by Thompson Environmental consultants. The general recommendation is that all trees on site should be considered for retention where possible, with the greatest consideration given to Category A trees and then B trees where these specimens occur, and finally Category C trees. T3 and T4 trees are located within an existing brick planter. These category B trees are too large to be in proximity of the existing and proposed buildings and therefore need to be removed. The proposals incorporate replacement trees of a more appropriate size and species as part of a comprehensive landscaping scheme.
- 6.11. Several issues were raised in relation to security and anti-social behaviour (ASB) and the risk of individuals using flats roofs to access adjacent gardens. The Council believes that the development proposals will bring new defined communal and private spaces, creating gardens over what was an underused open space. This will contribute to aural surveillance and control of access, therefore reducing the likelihood of ASB.

- 6.12. Some questions were raised about the potential impact of the new development on the availability of car parking. With the exception of the two wheelchair-accessible homes, Cornwall Road is a car-free development. Two parking bays for the two wheelchair units will be provided, and cycle storage for sixteen bikes is provided for the remaining seven homes. The site is located very close to a number of public transport options and within walking distance to local amenities. The provision of two parking spaces is considered appropriate and it is not considered that the development will cause a strain on the availability of parking locally.

Formal Consultation and Community Engagement – Stainby Road

- 6.13. The loss of amenity at Stainby Road Car Park obliges the Council to consult in line with section 105 of the Housing Act 1985 ('section 105'). The section 105 consultation period commenced on 7th September 2020 and ran until 18th October 2020. Of the 20 homes that received the section 105 pack inviting responses, just one household formally responded, stating that they have a garage attached to their house and access should be permitted. The proposed building has been positioned more than 6m from the garage in order to grant the necessary car manoeuvring space and ensure access.
- 6.14. Two community engagement meetings were held on Microsoft Teams for Stainby Road car park on Thursday 12th November and Friday 13th November 2020. The proposals were positively received by Members and some residents.
- 6.15. One resident supported the need for more council houses which is in keeping with those houses in the local area.
- 6.16. One resident commented on the number of new homes being developed in the area and the impacts this could potentially have on transport services and shops, and that open space will be further compromised by the removal of the car park at Stainby Road with only limited parking facilities in the area. Additionally, a resident raised concerns about there being no provisions for extra schools or nurseries.
- 6.17. A car-free development is proposed. The new houses will not have dedicated car parking spaces. Whilst the loss of parking at Stainby Road car park will have some limited impact on parking provision locally, it should be noted that the site is very accessible to local services and amenities including public transport. The site has PTAL 6a and shops are within walking distance. Haringey Local Plan 2017 is working towards low carbon in Haringey with great emphasis of ensuring that new developments reduce energy consumption and is sustainable. The provision for nurseries and local schools are considered through the planning process.
- 6.18. The scheme was submitted for planning on 23rd December 2020 and residents were again formally consulted as part of this process. Planning approval of the scheme was granted after considering responses to that consultation on the 12th and 13th November 2020.

The Build Contract

- 6.19. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.20. The housing schemes at Cornwall Road and Stainby Road car park have been designed up to stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Since planning approval has been granted, a contractor is now needed to undertake detailed technical design and new build works. It is currently anticipated that the contract period will be 17 months.
- 6.21. Due to design issues related to refuse and emergency access arrangements onto the site which had to be resolved before planning submission, the Council was unable to submit the Cornwall Road development for planning until 31st March 2021. Procuring both sites together on a single contract enabled a guaranteed tender return, offering the Council best value and ensuring that both sites can be delivered to schedule. Both sites are forecast with the GLA to start on site by September 2021. Identifying an efficient procurement process was crucial to avoid risk of loss of reputation and grant funding. The scheme's viability depends on securing this grant income.
- 6.22. Procuring both sites on a single contract also reduces the Council's costs for Employer's Agent (EA) services. The Council has appointed the same EA and multi- disciplinary consultants for both projects, and their fees are reduced on the basis that they run both schemes concurrently via the same project meetings, working with a single contractor for the two schemes.
- 6.23. Planning permission had been received for Stainby Road on 22 February 2021. Planning permission had not been granted for Cornwall Road when the tender commenced, but it was received during the tender period, on 26th May 2021, and the contractor was able to price for the works and consider any planning obligations within the price submitted.
- 6.24. Direct appointment in this case is justified because it is in the Council's overall interests. The scheme's viability depends on meeting deadlines attached to grant funding: the risk of an unsuccessful competitive tender process was considered to be high, and therefore to put the scheme's viability at risk. A locally-based contractor known to have provided the Council with quality work on similar schemes was therefore approached and asked to submit a tender return.
- 6.25. The selected contractor, NFC Homes Limited, which is based locally, was asked to respond to a 100% price assessment. They responded with their proposal on 3rd June 2021. Full tender sum analysis has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.26. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.27. Considering the size, scope, complexity, and abnormalities specific to these projects, the Project Cost Consultant has certified that the tender submitted by NFC Homes Limited of £3,228,291 offers value for money in the current market.

- 6.28. The recommendation is therefore to award the contract to NFC Homes Limited.
- 6.29. The contract is to be awarded to include new build works, site establishments, design works, site enabling, management costs, overheads and profits, and there is a defects liability period of 12 months.
- 6.30. The tender assumes signing of the contract and site possession by 30th September 2021, to allow start on site by Q2 2021. The tender offer remains open for 13 weeks from the return date.

Appropriation of land

- 6.31. This report seeks approval to appropriate the two sites, Cornwall Road and Stainby Road car park (each outlined red in the plans attached at Appendix 1), for planning purposes pursuant to Section 122 of the Local Government Act 1972 as it is no longer required for the purposes for which it is currently held.
- 6.32. Cornwall Road site is a vacant and part derelict land, formerly a tennis court adjacent and to the rear of an existing council block of flats. The surrounding area is residential in nature accommodating a range of property types and styles. The site is well located with convenient access to public transport and local shopping facilities and open space. The proposed development seeks to optimise the site to accommodate one and two-bedroom apartments including two fully accessible wheelchair dwellings. The site will be comprehensively landscaped to provide a green and attractive setting for the development and to enhance the appearance of the surrounding area.
- 6.33. Stainby Road car park is a noticeable gap in a well-established street. The assessment of the site recommended two houses will best respond to the surrounding constraints and the existing streetscape. The challenge is to introduce a new structure that will be sympathetic to the existing streetscape. The appropriation of the land and the subsequent development will enable the Council to develop much needed housing in the London Borough of Haringey.
- 6.34. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the HPA 2016 to override easements and other rights of neighbouring properties infringed upon by the Cornwall Road and Stainby Road development. The types of rights that can be overridden by Section 203 of the HPA 2016 are any easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the adjoining site. Any development which interferes with that right may entitle the owner of that right to seek an injunction preventing the development going ahead or damages for the effect on value of the right lost because of the interference. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.
- 6.35. The Council does not have reason to believe that there will be any infringement of the third-party rights outlined here. In the event that there was any infringement of those third-party rights, this would not constitute a breach to private and family life.

Any right of light on adjoining and neighbouring properties will be managed through rights to light insurance to protect developers from the risk of possible future claims resulting from infringements of a right of light. The engagement events held on 16th and 20th November for Cornwall Road and 12th and 13th November 2020 for Stainby, which is the formal planning consultation process, did not raise any concerns that there were possible infringements of third-party rights, including rights of light. Furthermore, if an injunction is sought by a third party for breach of a right, then if successfully claimed, the right will be converted into a right of compensation for loss of that right.

- 6.36. Based on the feedback following the public consultation event, there have not been any claims that any third-party rights would be infringed by the development.
- 6.37. Regarding the value of potential compensation for the loss of third-party rights of access and or enjoyment, having undertaken the necessary checks against neighbouring properties, none have easements in relation to the site. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made although it is not likely to be so significant as to impact on the scheme's viability.

7. Contribution to Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes"*.
- 7.2. In particular, the recommendations in this report are explicitly about delivering the aim *"to deliver 1,000 new council homes at council rents by 2022"*. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

Legal

Appropriation under Section 122 of the Local Government Act 1972

- 8.1. The Council 'holds' the two sites for housing purposes. In order to override any third-party rights affecting these two sites, the Council will need to rely on section 203 of HPA 2016 but must first appropriate each of the Sites for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972. Under Section 122

The council may appropriate for any purpose for which the council is authorised by statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the

appropriation.

- 8.2. Section 122 LGA 1972 also provides that the Council may not appropriate land constituting or forming part of an 'open space' or land forming part of a common (unless it is common or fuel or field garden allotment of less than 250 square yards unless they first advertise their intention to do so under the section.
- 8.3. The Council can appropriate under Section 122 LGA 1972 as:
- a) the Sites are Council owned land;
 - b) the Sites are no longer required for housing purposes; and
 - c) the Council is seeking to appropriate each of sites for the statutory purpose of planning.

- 8.4. The sites do not contain open space.

Section 203 of the Housing and Planning Act 2016

- 8.5. By appropriating the sites for planning purposes under Section 122 of the LGA 1972, the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.
- 8.6. Section 203 states a person may carry out building or maintenance work even it involves (a) interfering with a relevant right or interest (b) breaching a restriction as to use of land.
- 8.7. The Council satisfies the requirements of Section 203 as building works will be carried on each of these sites and planning permission has been granted for the Stainby Road site on 22nd February 2021 and for the Cornwall Road development on 26th May 2021.
- 8.8. The Council will be seeking to appropriate each of the Sites following practical completion of each development back for housing purposes into the HRA. The Council can under Section 19 (1) of the Housing Act 1985 appropriate for housing purposes any land for the time being vested in them and at their disposal. This appropriation is necessary as the new build units will be used for social housing by the Council and therefore each site must be held in the HRA.
- 8.9. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 ("the Framework").
- 8.10. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).
- 8.11. The Service and Strategic Procurement have confirmed the direct award of the contract as set out in the report is permissible under the rules of the Framework.
- 8.12. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

- 8.13. Strategic Procurement notes the update on the Housing Delivery Programme

and recommendations within section 3.1 (3.1.2-3.1.5) of this report; however, comments are not applicable for property and land transactions as they sit outside of the Procurement Contract Regulations.

- 8.14 Strategic procurement notes the proposed contract is sourced via the LCP framework lot 1.1b (housing and residential). The rules of the framework permit a direct award up to £2,500,000, and in exceptional circumstances above that value. Exceptional circumstances are defined as: there is a requirement for specialist skills/experience to deliver the works held by a single supplier to the Framework; there is insufficient time available to run a mini-competition and construct the works due to no fault of the Commissioning Organisation and where the circumstances are unforeseen; circumstances as set out in Regulation 32 and 72 of the Public Contract Regulations 2015 (as amended). In this situation there was not sufficient time available to run a mini-competition, as per the circumstances notes in 6.20 of this report.

Finance

- 8.15 The Cornwall Road site will deliver 3 one-bedroom and 6 two-bedroom flats for social rent. Stainby Road will deliver 2 houses. Total construction value is referenced on the Exempt report Appendix 2.
- 8.16 The preferred contractor was directly appointed, due to limited interest, following an assessment by the project team's cost consultant.
- 8.17 This scheme is contained in the current HRA financial plan and MTFS, and the estimated spend in the current year will be met from the approved new build capital budget.
- 8.18 Further Finance comments are contained in the Exempt report Appendix 2.

Equality

- 8.19 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not.
- 8.20 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex, and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.
- 8.21 The proposed decision relates to new build works to provide nine Council rented home at Cornwall Road and two new homes at Stainby Road. The decision will increase the supply of Council rented homes which are genuinely affordable to local residents. This is likely to have a positive impact on individuals in temporary

accommodation as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and individuals with disabilities are known to be vulnerable to homelessness, as detailed in the [Equalities Impact Assessment of the council's Draft Homelessness Strategy](#). As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

- 8.22 Following the S105 consultation related to the loss of the Stainby Road Car Park amenity, a full Equalities Impact Assessment was undertaken. This set out the potential impacts related to the loss of the car park for those with protected characteristics, and the actions the council has taken to mitigate these impacts. This has included carrying out a survey of nearby car park parking provision which indicated that the local provision was adequate to mitigate the negative impact. In addition, it was noted that building new council homes at council rents will have an overall positive impacts for those with protected characteristics in the borough by increasing the supply of affordable housing.
- 8.23 As an organisation carrying out a public function on behalf of a public body, the contractor will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

9. Use of appendices

Appendix 1 – Red line boundaries, CGI Floor Plans -
Appendix 2- Exempt – financial information

10. Local Government (Access to Information) Act 1985

Appendix 2 is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).

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Appendix 1

Cornwall Road – Red Line Boundary

The plan below illustrates the red line boundary plan for Cornwall Road development site.

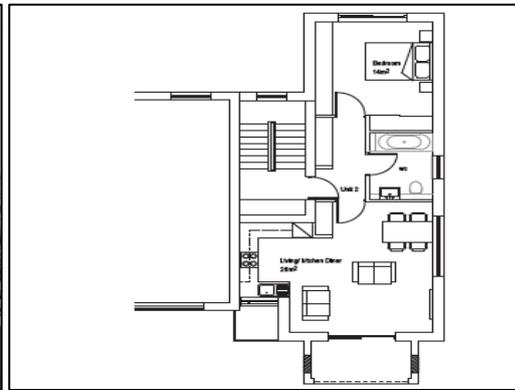
The land marked red will be redeveloped to provide 3 one-bedroom flats and 6 two-bedroom flats for social rent.



Cornwall Road – Planning Approved Design and floor layout.



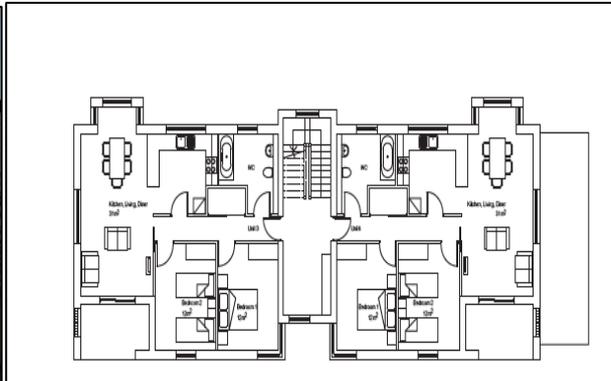
Cornwall Road block 1 – 3 one-bedroom flats



Typical floor plan block 1



Cornwall Road – block 2 – 6 two-bedroom flats

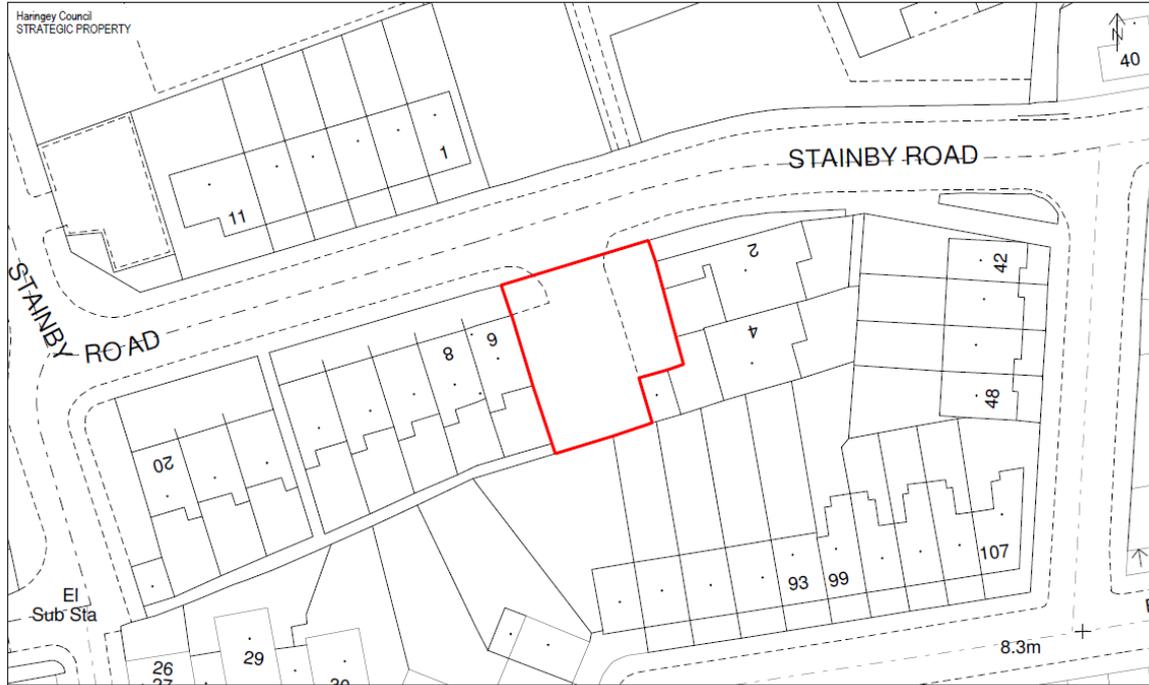


Typical floor plan block 2

Stainby Road car park – Red Line Boundary

The plan below illustrates the red line boundary plan for Stainby Road car park development site.

The land marked red will be redeveloped to provide 2 houses for social rent.



8 Stainby Road
London
N15 4FJ

Scale
0 2 4 6 8 10 m

Site Area (hectares):

Overlay: Hss - Misc
Plan produced by Sean Puroell on 19/03/2019

Scale: 1:500
BVES drawing no. A4 misc.

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Stainby Road car park – Planning Approved Design and floor layout



Stainby Road - 2 houses

Floor plan

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of the Local Government Act 1972.

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